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VIA COURIER

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future, CC Dkt. No. 01-92, WC Dkt. Nos. 07-135, 10-90, & 05-337, GN Dkt. No. 09-51*

Dear Ms. Dortch:

Integra Telecom, Inc. (“Integra”) and tw telecom inc. (“tw telecom”) (collectively, the “Joint CLECs”), through their undersigned counsel, hereby submit this letter in response to a recent filing by CenturyLink, FairPoint, Frontier and Windstream (collectively, the “mid-sized price cap ILECs”)¹ in the above-referenced dockets. In their filing, the mid-sized price cap ILECs urge the Commission to replace the rules requiring immediate application of bill-and-keep to the exchange of CMRS-LEC intraMTA traffic with rules that diminish, at least to some extent, the substantial reduction in intercarrier compensation revenues that a flash cut to bill-and-keep would cause. The mid-sized price cap ILECs suggest accomplishing this change by, among other things, adopting rules that (1) reduce rates for CMRS-LEC intraMTA traffic in accordance with the multi-year transition that applies to other forms of terminating traffic, or alternatively, (2) delay application of bill-and-keep to CMRS-LEC intraMTA traffic from December 29, 2011 to July 1, 2012.² The Joint CLECs agree.

In the *Order*, the Commission stated that “an immediate transition for reciprocal compensation traffic exchanged between LECs and CMRS providers presents a far smaller risk of market disruption than would an immediate shift to a bill-and-keep methodology for intercarrier compensation more generally.”³ In support of this conclusion, the Commission stated that it has “until recently had no

¹ See Letter from Karen Brinkmann, Counsel for CenturyLink et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al. (filed Dec. 14, 2011) (“Mid-Sized Price Cap ILEC Letter”).

² *Id.* at 3.

³ *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a*

pricing methodology applicable to competitive LEC-CMRS traffic,” CLECs “had no basis for reliance on such a methodology in their business models,” and thus, CLECs should be able to comply with the new bill-and-keep methodology “immediately.”⁴ But the marketplace reality is that, in the absence of any pricing methodology, CLECs and CMRS carriers entered into interconnection agreements under which they exchange intraMTA traffic subject to reciprocal compensation rates. Immediate elimination of those rates will have a substantial adverse financial impact on CLECs without yielding any countervailing policy benefit.

To begin with, just as the mid-sized price cap ILECs’ reciprocal compensation rates for CMRS-LEC intraMTA traffic “are much higher than \$0.0007,”⁵ Integra and tw telecom’s reciprocal compensation rates for such traffic are substantially higher than \$0.0007. Moreover, as a result of the immediate shift to bill-and-keep for CMRS-LEC intraMTA traffic, Integra expects to incur an estimated net revenue loss of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in the first six months of 2012. In addition, based on its year-to-date billings for intraMTA traffic exchanged with AT&T, T-Mobile and Verizon Wireless, tw telecom expects to incur an estimated net revenue loss of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in the first six months of 2012. Given that tw telecom’s net income for the first six months of 2011 was \$26.9 million, an estimated net loss of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] is significant.

Nor is there a compelling policy basis for inflicting this immediate harm on CLECs. Under the rules adopted in the *Order*, termination rates for all telephone traffic other than CMRS-LEC intraMTA traffic are subject to a gradual glide path transition to bill-and-keep.⁶ The Commission adopted multi-year transition periods to “moderate potential adverse effects on consumers and carriers of moving too quickly from the existing intercarrier compensation regimes.”⁷ There is every reason to adopt the same approach for eliminating intercarrier compensation rates for the exchange of CMRS-LEC intraMTA traffic. Doing so would give CLECs at least some chance to adjust their businesses to the loss of reciprocal compensation revenues. For example, CLECs could try to recover the lost revenues through increased end-user charges, but that process (assuming it is even possible given market conditions) will take time because many existing contracts do not permit CLECs to increase customer rates for the

Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 996 (rel. Nov. 18, 2011) (“Order”).

⁴ *Id.*

⁵ Mid-Sized Price Cap ILEC Letter at 2.

⁶ *See Order* ¶ 801.

⁷ *Id.*

purpose of recovering lost intercarrier compensation revenues.⁸ A gradual transition rather than a flash cut to bill-and-keep for CMRS-LEC intraMTA traffic would therefore increase the extent to which CLECs would have a realistic opportunity to adjust their businesses to the new rules.

Furthermore, as NTCA has recently explained, the application of bill-and-keep for CMRS-LEC intraMTA traffic raises a number of significant implementation problems.⁹ For instance, when a LEC customer places a call to a CMRS customer that has a number rated outside of the LEC's local calling area, it is not currently possible for the originating LEC "to determine if the call is destined for a CMRS customer and if so, if this customer is located inside the same MTA."¹⁰ Thus, the originating LEC is "unable to determine if the call should be delivered on a local basis or delivered to an IXC as a toll call."¹¹ Moreover, even if the originating LEC could determine whether the call should be delivered on a local basis, "there are numerous instances where CMRS carriers operating in the same MTA have not chosen to have direct or indirect connection with the LEC, so there are no facilities to route these calls other than through an IXC."¹² Numerous implementation issues also arise when the CMRS customer calls the LEC customer.¹³ For example, when the call is routed through an IXC, "there is no means for the terminating LEC to know whether the call is CMRS-originated or whether it is intraMTA."¹⁴

For all of these reasons, the Commission should include CMRS-LEC intraMTA traffic in the multi-year transition that applies to other forms of terminating traffic or, at a minimum, delay application of bill-and-keep to CMRS-LEC intraMTA traffic from December 29, 2011 to July 1, 2012.

The Commission should not, however, adopt the mid-sized price cap ILECs' proposals in the alternative to retain the immediate application of bill-and-keep to CMRS-LEC intraMTA traffic on December 29, 2011 and permit recovery from the ARM for the resulting lost revenues between

⁸ See, e.g., Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 et al., at 6-7 (filed Apr. 18, 2011).

⁹ See Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2-3 (filed Dec. 9, 2011) ("NTCA Letter"); see also *id.*, Attachment, Letter from Larry D. Thompson, Chief Executive Officer, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2-3 (filed Oct. 21, 2011) ("Vantage Point Solutions Letter").

¹⁰ NTCA Letter at 2.

¹¹ Vantage Point Solutions Letter at 2.

¹² NTCA Letter at 2; see also Vantage Point Solutions Letter at 2.

¹³ See NTCA Letter at 2-3; see also Vantage Point Solutions Letter at 2-3.

¹⁴ NTCA Letter at 2.

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December 29, 2011 and June 30, 2012.¹⁵ *First*, the mid-sized price cap ILECs themselves concede that these alternative proposals “are more administratively complex, would not prevent new arbitrage opportunities, and would not mitigate implementation issues.”¹⁶ For example, allowing additional subsidies for revenue recovery would require complex changes to the comprehensive universal service reform regime adopted in the *Order*.¹⁷ *Second*, requiring both ILECs and CLECs to reduce their reciprocal compensation rates for CMRS-LEC intraMTA traffic while permitting ILECs—but not CLECs—to recover the resulting lost revenues would only exacerbate an already skewed intercarrier compensation system. To add insult to injury, CLECs would be required to help pay for the additional subsidies to ILECs in the form of universal service contributions—contributions which will soon be at a historic high of 17.9 percent.¹⁸

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

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¹⁵ See Mid-Sized Price Cap ILEC Letter at 4; *see also* Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2 (filed Dec. 16, 2011) (asserting that “[a]ny revenue recovery implications of the new rule for incumbent LECs are best addressed through modification of the recovery mechanisms, if necessary”).

¹⁶ Mid-Sized Price Cap ILEC Letter at 4.

¹⁷ See also Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90 et al., at 2 (filed Dec. 16, 2011) (explaining that “[t]here has been no discussion of how [the] additional subsidies to [incumbent] LECs would be funded”).

¹⁸ See *Proposed First Quarter 2012 Universal Service Contribution Factor*, Public Notice, DA 11-2020 (rel. Dec. 14, 2011).